

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

January 30, 2006

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In the Matter of  
Francis T. Keally & Julia B.  
Keally

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Docket No. 2003-173  
File No. SE3-4048  
Barnstable

**RECOMMENDED FINAL DECISION**

This is an appeal by the Barnstable Conservation Commission of a Superseding Order of Conditions (SOC) issued from the Department's Southeast Regional Office. Prior to the issuance of the SOC, the Conservation Commission denied the project under the Barnstable Wetlands Protection Ordinance and the Wetlands Protection Act, and the applicant appealed the denial to Superior Court.

A motion to stay this proceeding in accordance with Wetlands Policy 89-1 (Appeal Stays: Stay of Requests for Adjudicatory Hearings in Wetlands Permit Cases when an Order of Conditions has been Denied under a Local Wetlands Bylaw) was granted on July 22, 2004. The applicant was ordered to file reports detailing the status of the Superior Court appeal of the project's denial under the Barnstable Ordinance.

On January 7, 2005, the Department's Office of Appeals and Dispute Resolution received a motion to lift the stay filed by the petitioner, requesting the SOC be vacated and the appeal be dismissed as moot. In its motion the petitioner attached the Superior Court judgment entered



January 28, 2005 denying the applicants' motion for the judgment on the pleadings. The applicants appealed the decision of the Superior Court to the Massachusetts Appeals Court. The petitioner also provided with its motion a copy of an Order from the Appeals Court that dismissed the applicant's appeal with prejudice entered December 2, 2005, and approved a stipulation of dismissal.

The Commission's denial under the local wetlands ordinance is now final. The project cannot be built as conditioned in the SOC and the applicants cannot comply with Special Conditions numbered 3 and 8 in the SOC. Accordingly, I recommend granting the petitioner's motion, vacating the SOC and dismissing this appeal as moot pursuant to 310 CMR 1.01(5)(a) 2.

### **NOTICE**

This decision is a recommended final decision of the Presiding Officer. It has been transmitted to the Commissioner for his final decision in this matter. This decision is therefore not a final decision subject to reconsideration under 310 CMR 1.01(14)(e), and may not be appealed to Superior Court pursuant to M.G.L. c.30A. The Commissioner's final decision is subject to rights of reconsideration and court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this recommended final decision or any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner in his sole discretion, directs otherwise.

This final document copy is being provided to you electronically by the  
Department of Environmental Protection. A signed copy of this document  
is on file at the DEP office listed on the letterhead.

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Ann Lowery  
Presiding Officer

*Adopted by Commissioner Robert W. Golledge, Jr., February 13, 2006.*